



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

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Office of West Virginia  
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Secretary Of State TITLE-SERIES: 153-13  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: EARLY VOTING IN-PERSON COMMUNITY  
VOTING LOCATIONS

CITE STATUTORY AUTHORITY: W. Va. Code § 3-3-2a(c)

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB 361

Section 64-9-16 Passed On 3/11/2023 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 24, 2023

This rule shall terminate and have no further force or effect from the following date:

August 01, 2028

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

**Yes**

**Donald Kersey -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 153  
LEGISLATIVE RULE  
SECRETARY OF STATE

SERIES 13  
EARLY VOTING IN-PERSON COMMUNITY VOTING LOCATIONS

**§153-13-1. General.**

1.1. Scope. -- This rule amends criteria to assure neutrality and security in the selection process for early voting in-person community voting locations and establishes processes and deadlines for establishing such precincts.

1.2. Authority. -- W. Va. Code § 3-3-2a(c).

1.3. Filing Date. -- April 24, 2023.

1.4. Effective Date. -- April 24, 2023.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2028.

**§153-13-2. Definitions.**

2.1. For the purposes of this rule:

2.1.1. "Broadcast" means announced or advertised on over-the-air, cable, or satellite television or radio.

2.1.2. "Clerk" means the Clerk of the County Commission or other official charged with the administration of elections.

2.1.3. "Early voting" means early in-person absentee voting as provided for in W. Va. Code §3-3-3.

2.1.4. "Permanent structure" means a building or permanent fixture not erected solely for the purpose of serving as a satellite location and specifically excludes mall kiosks, mobile vehicles, motor homes, or recreational vehicles.

2.1.5. "Published" means a Class 11-0 legal advertisement as defined in W. Va. State Code §59-3-2. For counties having more than one qualified newspapers weekly, the notice must be published in each of the qualified newspapers.

2.1.6. "Community voting location or locations" means one or more locations for in-person early voting in addition to the primary location as provided for in W. Va. Code §3-3-2a.

2.1.7. "Election day" means the regularly scheduled date of a primary election according to W. Va. Code § 3-5-1, a general election under W. Va. Code § 3-1-31(a), or a special election under the authorizing statute or official act, and shall not be interpreted to refer to the first day of early in-person voting.

**§153-13-3. Early Voting Community Voting Location Selection; Emergency Location Changes.**

3.1. No less than 120 days prior to election day, the clerk shall submit a proposal for an early voting community voting location in writing to the County Commission for approval or disapproval.

3.2. The proposal submitted by the clerk shall include:

3.2.1. The proposed location or locations for early voting community voting locations;

3.2.1.a. The proposed location must be in a permanent structure, with preference given to public buildings, and capable of being secured during times when election officials are not present;

3.2.1.b. The proposed location must have secure access to the internet, or telephone access, for purposes of immediately crediting the voters vote.

3.2.2. Provisions for staffing the community voting locations including a minimum of two persons as provided for in W. Va. Code §3-3-2a(d)(4): *Provided*, That the two (2) persons may not be registered with the same political party affiliation or two (2) persons registered with no political party affiliation. The persons may be full-time employees of the county or temporary employees hired for the period of early voting or volunteers; and

3.2.3. Any other procedures necessary for the proper conduct of an election according to provisions of W. Va. Code §§3-1-1 *et seq.*, 3-3-2a and 3-3-3, and section five (5) of this rule, at the early voting community voting locations.

3.3. In order to assure neutrality in the community voting location selection process:

3.3.1. The county executive committees of the two major political parties may nominate sites to be used as community voting locations during the early voting period pursuant to W. Va. Code § 3-3-2a(b)(3). Nominations under this section shall be made by written request to the clerk delivered no later than 150 days prior to election day, and shall clearly list the address(es) and neutrality criteria listed in Subdivision 3.3.2 for each proposed community voting location. Upon the clerk's approval of the written proposal, the clerk shall submit the proposal to the county commission prior to the notice deadline set forth in Subsection 3.1 of this rule: *Provided*, That pursuant to the clerk's authority under W. Va. Code § 3-3-2a(b), delinquent nominations by county executive committees shall not prohibit the clerk from approving or submitting a proposal to the county commission within the deadlines set forth by law and this rule.

3.3.2. The clerk shall submit to the county commission the basis for the neutrality of the proposal. Neutrality may be assured by taking into account all or part of the following factors:

3.3.2.a. Distance from the main early voting location;

3.3.2.b. Population centers of the county;

3.3.2.c. Historic voting turnout rates of the proposed location compared to the county as a whole;

3.3.2.d. Political party affiliation ratio of registered voters in the precinct of the proposed community voting location balanced against the affiliation ratio of the county as a whole or balanced against the affiliation ration of other proposed community voting locations.

3.4. The county commission shall approve or disapprove the proposal submitted by the clerk no less than 90 days prior to election day. An early voting community voting location may continue to be used in subsequent elections without complying with the approval process if the county commission finds, and the clerk agrees, at least 50 days, but not more than 80 days, prior to the election, that the location continues to qualify under this rule according to W. Va. Code § 3-3-2a(b)(8).

3.5. No later than 60 days prior to election day, in the case of an emergency that results in the unavailability of a designated community voting location, the county commission may enter an order to move the community voting location with the clerk's approval under W. Va. Code § 3-3-2a(b). Reasonable notice of the ordered change shall be given to the public in a clear and conspicuous manner, which may include but is not limited to public announcements, news media, social media, and posting on the county's website.

3.6. After the deadline has passed for an emergency community voting location change under Subsection 3.5, if for any reason the election cannot be held at the designated community voting location and no provision has been made by the county commission for holding the election at another place, the election workers for that precinct may hold the election at the nearest place which they can secure for the purpose. They shall make known by proclamation to voters present at the time for opening the polls, and by posting a notice at or near the entrance of the first named community voting location, the address to the new community voting location. The county commission shall establish another place of voting for that community voting location with the clerk's approval under W. Va. Code § 3-3-2a(b) as soon thereafter as practicable.

#### **§153-13-4. Crediting of Voter Record.**

4.1. Any voter who votes at an early voting community voting location shall immediately be given credit in the uniform voter registration system, or an electronic poll book system, as the case may be, and the clerk shall take all necessary steps to prevent a voter from voting more than once. In community voting locations that do not have secure internet access available, the poll workers shall call the County Clerk's office, before allowing the voter to vote, to determine if the voter has already voted at another location, and to give immediate credit in the uniform voter registration system.

4.2. If internet access to the uniform voter registration system is temporarily interrupted, the voter may:

4.2.1. Wait until access has been reestablished; or

4.2.2. Go to another location to vote early; or

4.2.3. Vote a provisional ballot. The provisional ballot will not be counted unless it is confirmed at canvassing that the voter did not vote a second ballot.

4.3. W. Va. Code § 3-9-17 makes it a misdemeanor for any person to vote more than once in the same election.

#### **§153-13-5. Procedures for Conducting Early Voting at Community Voting Locations.**

5.1. All election material and equipment used at any community voting location shall be prepared in the same manner as the equipment used during early voting at the primary location including, but not limited to:

5.1.1. Provisions for the security of ballots and other election material; and

5.1.2. Logistics and accuracy testing of voting equipment.

5.2. Counties using paper ballots or optical scan ballots must have copies of each ballot style at the early voting community voting location in numbers sufficient for the efficient conduct of early voting.

5.3. Each early voting community voting location must be open and operational in the same manner as the primary location for early voting.

5.4. Early voting at a community voting location must be available for a minimum of five (5) consecutive days during early in-person voting, but need not be available for the entire period of early in-person voting, beginning on thirteenth (13th) day before the election and continuing through the third

(3rd) day before the election. A community voting location is not required to be open on Saturdays, so long as it is open for at least five (5) consecutive days.

5.5. If more than one community voting location is authorized under W. Va. Code § 3-3-2a(b), each precinct may be open on a rotating basis for a period of five (5) consecutive days or more. Each community voting location must be open for an equal number of voting days and the same number of hours per day, except for community voting locations open on Saturdays which hours shall be 9:00 a.m. to 5:00 p.m. For purposes of calculating the total number of days, Sundays are not counted.

#### **§153-13-6. Security.**

6.1. Security of both used and unused ballots, any voting equipment and supplies and all poll books must be maintained in the same manner as at the primary early voting location according to provisions of W. Va. Code §§3-1-1 *et seq.*, 3-3-2a(d)(2) and 3-3-3.

6.2. The official in charge of conducting early voting must provide a means by which the ballot boxes, supplies and voting equipment are secured from tampering. Ballot boxes, supplies and machines, during periods when voting is not taking place, must be locked and secured in such a way so that no person other than the officials or employees of the official designated to conduct early voting or members of the board of ballot commissioners may enter the area or room set aside for voting or access the voting equipment.

6.3. At the end of voting hours each day during early voting, the two (2) community voting location employees will record the number of the last ballot used and will record the number of votes recorded on voting equipment.

6.3.1. In counties using Direct Recording Electronic (DRE) voting system, the Personalized Electronic Ballots (PEB) shall be secured in a receptacle and sealed with a numbered seal. The seal number is to be recorded with the record of the public count from the machine.

6.3.2. In counties using ExpressVote voting system, the unused ballots shall be secured in a receptacle and sealed with two (2) locks with different keys, a numbered seal or security tape.

6.3.2.a. If locks are used, each community voting location employee shall keep one (1) key for one (1) lock so that the box cannot be open without both employees present.

6.3.2.b. If a numbered seal is used, the seal number is to be recorded with the record of the public count from the precinct scanner. If security tape is used, two (2) community voting location employees shall sign their names across the tape.

6.4. At the beginning of voting hours the next day, the two community voting location employees will record the number of the next ballot available and will check the number of votes recorded on the voting equipment. The seal(s) or security tape shall be inspected to assure there has been no tampering. Then the seal(s) shall be broken and the materials removed for voting. Any discrepancy must be immediately reported to the Clerk and no voting may take place at the community voting location until the discrepancy is resolved.

6.5. Ballot boxes and machines may not be removed from the community voting location except under the supervision of the officials or employees of the official designated to conduct early voting.

#### **§153-13-7. Ballot disposition and counting.**

7.1. Ballots shall be counted in the manner prescribed by W. Va. Code §3-3-8.

7.2. For counties using paper ballots, the ballot boxes shall be sealed and transported by two (2) community voting location workers, of differing political affiliation, to the main early voting location before being counted.

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7.3. For counties using optical scan systems, direct recording or ExpressVote equipment, the ballots and machine memory device(s) shall be sealed and transported by the two (2) community voting location workers, of differing political affiliation, to the main early voting location before being counted.

7.4. Provisional ballots will be placed in a sealed bag and transported to the main early voting location for disposition in accordance with W. Va. Code § 3-3-8(d).

**§153-13-8. Public Notice.**

8.1. Not later than seven (7) calendar days before the start of early voting, the county commission shall cause a notice to be broadcast in a manner sufficient to reach a majority of citizens in the county as determined by the County Commission or published as defined in Section two of this rule, and placed on the county's website (if applicable). The notice placed on the county's website must remain on the website until the close of the early voting period. All notices shall state the location or locations and dates and hours of operation for each early voting community voting location.